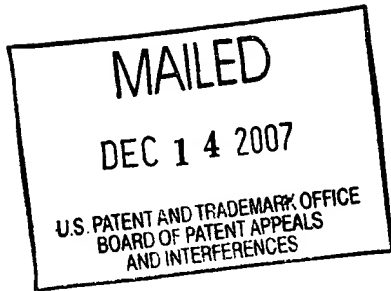


UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH W. COLE and ERNEST G. COLE

Application 09/750,742

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on December 6, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below.

Appellants filed an Appeal Brief on November 13, 2006, in response to the Final Rejection mailed May 8, 2006. In the Final Rejection the examiner states that claims 47-60 are being rejected. However, the Appeal Brief under Status of Claims states:

“The application contains Claims 47-48 and 50-60, which claims are subject to this appeal.

In an action dated May 8, 2006, the Examiner finally rejected all the pending claims. Appellant notes that while the Examiner indicated the rejection of Claims 47-60 by the May 8, 2006 Office Action, Claims 47-48 and 50-60 are the pending claims (Claim 49 having been previously canceled).”

The Examiner’s Answer filed June 4, 2007, states under Status of Claims that “The statement of the status of claims contained in the brief is correct.” But, under the Grounds of Rejection section, the Examiner has listed Claim 49 as being rejected under 35 USC § 103C. Clarification for the record is required.

Further, on September 5, 2007, a PTOL-901, in the form of a Supplemental Examiner’s Answer was mailed in response to a Reply Brief filed on July 30, 2007.

37 CFR 41.43 states:

Examiner’s response to reply brief.

(a)(1)After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner’s answer responding to any new issue raised in the reply brief.

(2) A supplemental examiner’s answer responding to a reply brief may not include a new ground of rejection.

(b) If a supplemental examiner’s answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner’s answer within two months from the date of the supplemental examiner’s answer.

MPEP § 1207.05 states in part..


All Supplemental Examiner's Answers are required to obtain approval of the Technology Center Director or his/her designee. Appropriate correction is required.

Accordingly, it is

ORDERED that the application is electronically returned to the examiner:

- 1) for clarification of the Status of Claims;
- 2) to vacate the PTOL-90 mailed September 5, 2007, to include the approval of the Technology Center Director in accordance with 37 CFR 41.43; and
- 3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
PATRICK J. NOLAN
Deputy Chief Appeals Administrator
(571) 272-9797

PJN/gjh

Application No. 09/750,742

WEIDE & MILLER, LTD.
7251 W. LAKE MEAD BLVD.
SUITE 530
LAS VEGAS, NV 89128